

Notice of Allowability

Application No.

09/937,484

Applicant(s)

FOSTER ET AL.

Examiner

Maury Audet

Art Unit

1654

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 10/24/2006.
2. ☒ The allowed claim(s) is/are 48 and 76-78.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some* c) ☐ None of the:
- ☒ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____. |
| 3. <input checked="" type="checkbox"/> Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date <u>08/06</u> | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____. |

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Tim Shea, Applicant's representative, on 11/27/2006.

IN THE CLAIMS

Claims 79 and 80 have been cancelled without prejudice.

Reasons for Allowance

The following is an examiner's statement of reasons for allowance:

Claims 48 and 76-78, as drawn to a method of treating pain resulting from C-fibre neuron activity, comprising the use of the specific lectin species *Erythrina cristagalli*, *Bandeiraea simplicifolia* lectin IB₄, and *Triticum vulgaris* (see e.g. specification Ex. 5 and 7-8, respectively), as well as method of treating inflammation caused by C-fibre neuron activity comprising the use of the specific lectin species *Erythrina cristagalli* (see e.g. specification Ex. 18), are not reasonably taught or suggested by the prior art of record. As indicated in the previous FINAL rejection, under prior art made of record but not relied on, the closest piece of prior art was that of Oldham et al. (US 2002/0137674). "Oldham et al. teaches the use of lectins (e.g. *Erythrina cristagalli*; e.g. Table 1) for the treatment of organisms such as H. Pylori and associated ulcers

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thereto (para 37). Although ulcers are associated with inflammation (which Applicant describes as one of the C-fibre neuron diseases or conditions), the method of Oldman et al. is directed to treatment of infection (as opposed to C-fibre neuron associated) based ulcers/inflammation. Thus, Oldman et al. is not at this time deemed to reasonably teach or suggest a method of treating (inhibiting/stimulating) C-fibre neuron activity.” The reference, alone or in combination, still does not teach a method of treating pain caused by C-fibre neuron activity using any of the three lectin species above or inflammation caused by C-fibre neuron activity using *Erythrina cristagalli*.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled “Comments on Statement of Reasons for Allowance.”

Conclusion

No claims are allowed.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Maury Audet whose telephone number is 571-272-0960. The examiner can normally be reached on M-Th. 7AM-5:30PM (10 Hrs.).

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Cecelia Tsang can be reached on 571-272-0562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MA, 11/27/2006


Cecilia J. Tsang
Supervisory Patent Examiner
Technology Center 1600